Decision for dispute CAC-UDRP-101809

Case number	**CAC-UDRP-101809**
Time of filing	**2017-12-20 08:56:10**
Domain names	**LindThomEofChocolate.com**

Case administrator

Organization	**Iveta Špiclová (Czech Arbitration Court) (Case admin)**

Complainant

Organization	**Chocoladefabriken Lindt & Sprüngli AG**

Complainant representative

Organization	**BrandIT GmbH**

Respondent

Name	**vildan erdogan**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is a major international manufacturer of premium chocolate, owner of the well-known trademark "LINDT", registered at a national and international level since 1998.

Likewise, the Complainant also owns several domain names consisting of the verbal portion "LINDT".

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is a major international manufacturer of premium chocolate with a global presence, which is headquartered in Switzerland.

The Complainant is the owner of the registered well-known trademark "LINDT" as a word and figure mark in several classes in numerous of countries all over the world, and it has a strong presence in Turkey, where the Respondent resides.

The Complainant has registered a number of domain names under generic Top-Level Domains ("gTLD") and country-code

Top-Level Domains ("ccTLD") containing the term “LINDT”, and it uses these domain names to connect to a website through which it informs potential customers about its Lindt mark and its products and services.

The Respondent has registered the disputed domain name <LINDTHOMEOFCHOCOLATE.COM> on November 16, 2017, which, at the time of the complaint filing, was connected to a webpage in which it was offered for sale.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

I. THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO THE COMPLAINANT`S TRADEMARK

The Panel finds that the disputed domain name is confusingly similar to the trademark “LINDT” and to the relative domain names registered by the Complainant, which has proven to have prior rights.

In particular, the Panel believes that the mere addition of the expression "HOUSE OF CHOCOLATE" to the verbal element "LINDT" is not sufficient to avoid the confusingly similarity of the disputed domain with the trademark "LINDT". On the contrary, the risk of confusion is even worse in this case, as chocolate is the Complainant's core business.

II. THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

According to the information provided by the Complainant, the Respondent is not affiliated nor authorized by the Complainant in any way. Likewise, the Complainant neither licensed nor authorized the Respondent to make any use of its trademark “LINDT”, or to apply for registration of the disputed domain name on behalf of the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

It is undeniable that the Complainant is only required to make out a prima facie case that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

Given all the above and taken into account the fact that the Respondent did not provide any response within the present proceeding, the Panel accepts the contentions of the Complainant that the Respondent has no such rights or legitimate interests in <LINDTHOMEOFCHOCOLATE.COM>.

III. THE DISPUTED DOMAIN NAME HAS BEEN REGISTERED AND IS BEING USED IN BAD FAITH

The Panel finds that the Complainant successfully submitted prima facie evidence that the Respondent has made no use of, or demonstrable preparations to use, neither of the disputed domain name in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain name. This prima facie evidence was not challenged by the Respondent, not even after the cease and desist letter received from the Complainant on November 24, 2016.

It is undeniable that the failure of the Respondent to reply to a cease and desist letter may be further evidence of bad faith (see e.g. Coutts & Co. v. Sande Skalnik, Patrick Harding, WIPO Case No. D2015-1590; Citrix Systems, Inc. v. Domains by Proxy, LLC / Sirishareddy Idamakanti - Sirisha Idamaknti, WIPO Case No. D2015-0017; E. & J. Gallo Winery v. Oak Investment Group, WIPO Case No. D2000-1213; Encyclopaedia Britannica, Inc. v. John Zuccarini and The Cupcake Patrol a/ka Country Walk a/k/a Cupcake Party, WIPO Case No. D2000-0330) and, according to the Panel, the above actually applies in this case.

In the absence of a Response and given the reputation of the Complainant and its trademarks supported by the submitted evidence, the Panel infers that the Respondent had the Complainant's trademarks "LINDT" in mind when registering <LINDTHOMEOFCHOCOLATE.COM>. Consequently, the Panel believes that the same was registered and is being (passively) used in bad faith, in order to prevent the Complainant from reflecting the mark in the disputed domain name (see Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003, Jupiters Limited v. Aaron Hall, WIPO Case No. D2000-0574).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **LINDTHOMEOFCHOCOLATE.COM**: Transferred

PANELLISTS

Name	**Tommaso La Scala**

DATE OF PANEL DECISION 2018-01-20

Publish the Decision